

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALAN T. HECHT and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY

*Docket No. 00-1714; Submitted on the Record;  
Issued July 5, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing that he developed a hand condition in the performance of duty.

On December 13, 1999 appellant, then a 59-year-old social worker, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that the tingling and numbness in his fingers were employment related. He stated that he first became aware of his hand condition on December 1, 1999, which he attributed to excessive use of his computer.

Accompanying appellant's claim was a December 22, 1999 note from Dr. James J. Gregory, a chiropractor, who indicated that appellant was not to return to work until further notice.

The employing establishment submitted a form indicating that appellant did not do extensive typing.

In a letter dated January 19, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence.

In response, appellant indicated that he had been one of the high producers in preparing chart notes, completing more than 1,000 notes a month.<sup>1</sup> He noted that he did not have an adequate chair or desk and that his condition had gotten progressively worse to the extent that he could not move his left hand and experienced pain radiating into his left hand and forearm. Appellant was diagnosed with carpal tunnel syndrome but did not submit records from the employing establishment medical center.

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<sup>1</sup> The employing establishment submitted a summary of the progress notes prepared by appellant in 1999. Appellant's production for this period ranged from 157 notes per month to 205 notes per month.

On February 15, 2000 Dr. Earl L. Zeitlin, a Board-certified psychiatrist and neurologist, sought authorization from the Office for an electromyogram (EMG) and nerve conduction and velocity studies.

On March 22, 2000 the Office denied appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>2</sup> The Office found that the evidence failed to establish that appellant sustained an injury within the performance of duty.

The Board finds that appellant has not met his burden of proof in establishing that he developed a hand condition in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required, to establish causal relationship is generally rationalized medical opinion evidence.

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

In this case, appellant has not submitted sufficient medical evidence to establish that any alleged hand injury is causally related to employment factors or conditions. The only medical evidence submitted was a note dated December 22, 1999 by Dr. Gregory, a chiropractor.

The Board has held that medical opinions, in general, can only be given by a qualified physician.<sup>6</sup> Pursuant to section 8101 of the Act<sup>7</sup> the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition and treating such subluxations by manual manipulation.<sup>8</sup> The Board has held chiropractic opinions on conditions beyond the spine to be of no probative medical value.<sup>9</sup> As a chiropractor may qualify as a physician only in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine.<sup>10</sup>

In this case, Dr. Gregory did not diagnose a spinal subluxation as demonstrated by x-ray to exist; therefore, he is not considered a physician and his report is given no probative value.

Appellant also submitted a note from Dr. Earl Zeitlin's office requesting authorization for an electromyogram (EMG) and nerve conduction velocity (NCV) studies. However, this note was not signed by a physician and thus does not have probative value as medical evidence.<sup>11</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>12</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

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<sup>6</sup> See *George E. Williams*, 44 ECAB 530 (1993); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949); *Donald J. Miletta*, 34 ECAB 1822 (1983) (medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered).

<sup>7</sup> 5 U.S.C. §§ 8101(2) and (3).

<sup>8</sup> See, e.g., *Christine L. Kielb*, 35 ECAB 1060, 1061 (1984).

<sup>9</sup> *George E. Williams*, *supra* note 6.

<sup>10</sup> 5 U.S.C. § 8101(2) provides: See *Victor J. Woodhams*, *supra* note 4. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine.

<sup>11</sup> *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

<sup>12</sup> See *Victor J. Woodhams*, *supra* note 4.

The March 22, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
July 5, 2001

Michael J. Walsh  
Chairman

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member